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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

COMMITTEE TO RECALL DAN
HOLLADAY, JEANA GONZALES, and
ADAM MARI,

Plaintiffs,

v.

JAKOB WILEY, City Recorder for the City of
Oregon City, in his official capacity,

Defendant;

and

STATE OF OREGON,

Intervenor.

Civil No.: 3:20-CV-01631-YY

**DEFENDANT'S JOINDER IN
INTERVENOR STATE OF OREGON'S
RESPONSE TO PLAINTIFFS'
OBJECTIONS TO MAGISTRATE
JUDGE YOU'S FINDINGS AND
RECOMMENDATIONS**

Defendant Jacob Wiley, City Recorder for Oregon City in his official Capacity ("the City") joins in and incorporates by reference the State of Oregon's Response to Plaintiffs'

Objections to Magistrate Judge You’s Findings and Recommendations.¹ In her Findings and Recommendations, Judge You found that Plaintiffs failed to state a federal claim and that the Court lacked subject matter jurisdiction over Plaintiffs’ state law claims. Based on those findings, Judge You correctly recommended dismissal. For the reasons set forth in detail in the State’s Response to Plaintiffs’ Objections, this Court should adopt the Findings and Recommendations and dismiss all of Plaintiffs’ claims.

None of Plaintiffs’ objections to Judge You’s Findings have any merit. As the State explains in its Response, Judge You correctly determined that Plaintiff Marl’s claims were moot and not subject to the mootness exception for “actions capable of repetition yet evading review.” Nor is there any merit to Plaintiffs’ federal constitutional objections. Judge You found that Plaintiffs failed to state a claim under the federal constitution, and this Court should adopt that ruling. Again, the City joins in and incorporates by reference all of the State’s arguments in support of the Findings and Recommendations.

The Findings and Recommendations also properly reject Plaintiffs’ state law claims based on the City’s sovereign immunity. Judge You properly concluded that Defendant “was acting as a state official when she enforced the 90-day deadline contained in O.R.S. Section 249.875,” and that the City was therefore entitled to immunity.² Plaintiffs’ new arguments, raised for the first time in their Objections, do nothing to change that conclusion. Unlike in *Crowe v. Oregon State Bar*, 989 F.3d 714 (9th Cir. 2021), this is not a case where the Court must determine whether or not “state-created or state-managed entities are immune from suit ... as an

¹ Dkt. 57.

² Dkt. 52.

arm of the state entitled to sovereign immunity.” *Id.* at 730, *quoting Durning v. Citibank, N.A.*, 950 F.2d 1419, 1423 (9th Cir. 1991). Rather, this case involves a local City official’s ministerial application of state law. It is well established that “county and local officials can still be treated as state officials for Eleventh Amendment purposes when carrying out non-discretionary duties subject to state policy control.” *Cassell v. Snyders*, 990 F.3d 539, 552 (7th Cir. 2021). The Ninth Circuit just this year explained that state and local officials qualify as an agent of the state “when a state statutory regime comprehensively directs” the official’s actions. *Buffin v. California*, 23 F.4th 951, 962 (9th Cir. 2022). As explained in detail in Defendant’s motion to dismiss briefing, that is precisely what the City’s Recorder was doing when she applied Oregon law and declined to extend the signature-gathering deadline.

For all of the reasons stated above and in the State’s Response, this Court should adopt the Findings and Recommendations and dismiss Plaintiffs’ Second Amended Complaint.

DATED: October 21, 2022

Respectfully submitted,

BATEMAN SEIDEL MINER BLOMGREN
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By: s/ Kevin S. Mapes
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Of Attorneys for Defendant Jakob Wiley

CERTIFICATE OF SERVICE

I hereby certify that, on October 21, 2022, I served **DEFENDANT'S JOINDER IN INTERVENOR STATE OF OREGON'S RESPONSE TO OBJECTIONS TO MAGISTRATE JUDGE YOU'S FINDINGS AND RECOMMENDATIONS** on the following parties by using the court's CM/ECF EFile and Notice of Filing System:

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DATED: October 21, 2022

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